IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 937 of 1998

RAM SINGH
V/S
RAM RAKH & ORS

Mr. SHYAM SINGH BHATI, for the appellant / petitioner

Mr. CR JAKHAR, for the respondent

Date of Order : 2.12.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial court has rejected the petitioner's application filed under O. 22 Rule 4 C.P.C. filed on 4.4.1998 for bringing on record the legal representatives of deceased defendant no. 2 Kishna Ram on record who died on 13.8.1995.

The learned trial court in the impugned order has noticed that it is not in dispute that the defendant no.2 died on 13.8.1995, and the application had been filed on 4.4.1998, and an application has also been filed for condonation of delay on the ground that he did not come to know of the death of the deceased till the death certificate was filed in the Court by the counsel for the defendant as the plaintiff lives on the tube-well of his daughter for the last five years. The defendants contested the application by filing reply and affidavit contending that the parties are close relations, and the plaintiff never lived in Khavaspura rather the plaintiff attended the condolence at the time of death, also attended the Jagran, and he attended the cremation as well, as such there is no sufficient ground for condoning the delay. In these circumstances, the learned trial court found that no sufficient cause has been made out for condoning the delay in filing the application and taking on record legal representatives.

Having heard learned counsel at length, and having perused the record, I do not find any jurisdictional error in the impugned order, inasmuch as, the plaintiff has filed the suit with the allegation that he is in exclusive possession of the suit property which is being used by him for tethering cattle, storing fodder, and dung, and other domestic articles, while the defendants are threatening to forcibly dispossess him. The suit was filed on 16.9.1992. In these

circumstances, on the face of it, it cannot be believed that the plaintiff is living for the last more than five years at a different village, and rarely comes to village Ratkuria. It is not in dispute that the parties are relations, and in that view of the matter, it is legitimate to believe, that in the small villages the petitioner must be aware of the death of his relation, apart from the fact that the defendants have clearly contended that the petitioner even attended the cremation.

In that view of the matter, I am not inclined to interfere in my revisional jurisdiction in the impugned order. The revision is, therefore, dismissed. The record of the learned trial court be returned forthwith.

(N P GUPTA),J.

/Sushil/